## PATRICK HO CHANG v. PERTUBUHAN KESELAMATAN SOSIAL

HIGH COURT MALAYA, SHAH ALAM
WONG KIAN KHEONG J
[ORIGINATING SUMMONS NO: BA-24NCvC-1228-10-2018]
4 OCTOBER 2019

***CIVIL PROCEDURE:*** *Parties – Joinder – Application to join parties as co-respondents – Applicant's application for invalidity pension dismissed by Medical Board – Appellate Medical Board dismissed applicant's appeal against Medical Board's decision – Applicant appealed against decision of Appellate Medical Board to High Court – Application to join doctors who were members of Appellate Medical Board as co-respondents – Whether doctors personally liable to pay invalidity pension to applicant – Whether presence of doctors necessary to ensure matters in dispute may be effectually and completely determined – Whether court should exercise discretion to join doctors as co-respondents – Rules of Court 2012, O. 15 r. 6(2)(b)(i) – Employees' Social Security Act 1969, s. 59A*

***WORDS & PHRASES:*** *'Substantial questions of law' – Appeal against decision of Appellate Medical Board – Applicant's application for invalidity pension dismissed by Medical Board – Appellate Medical Board dismissed applicant's appeal against Medical Board's decision – Applicant appealed against decision of Appellate Medical Board to High Court – Whether applicant could appeal to High Court – Whether there were 'substantial questions of law' warranting appeal – What constitutes 'substantial questions of law' – Employees' Social Security Act 1969, s. 91(1) & (2)*

Following a disability resulting from a fall, the appellant applied for an invalidity pension, pursuant to s. 15(a) of the Employees' Social Security Act 1969 ('Act'), to the respondent ('the claim'). The respondent's Medical Board ('MB') examined the appellant and dismissed the claim. The appellant appealed against the MB's decision to the respondent's Appellate Medical Board ('AMB') but the appeal was dismissed ('AMB's decision'). This prompted the appellant to commence the present originating summons ('OS'), seeking orders (i) to set aside the AMB's decision; and (ii) for the respondent to refer the claim to a newly-constituted AMB with three stipulated conditions. In encl. 8, the appellant applied for, *inter alia*, an order to join the three medical doctors who were members of the AMB, that made the AMB's decision, as the co-respondents in the present OS. The issues that arose for adjudication were (i) in respect of the OS, whether the appellant could appeal against the AMB's decision when (a) ss. 32(a), 33(1) of the Act and reg. 47 of the Employees' Social Security (General) Regulations 1971 ('Regulations') provide that any question regarding the appellant's invalidity 'shall' be decided by the MB; (b) any decision of the MB may be appealable to the AMB, pursuant to s. 33(2) of the Act; and (c) s. 91(1) and (2) of the

Act prescribe that an appeal to the High Court, against a decision of the AMB, 'shall' lie only if the appeal involves a 'substantial question of law'; and (ii) in respect of encl. 8, whether the court should exercise its discretion under O. 15 r. 6(2)(b)(i) and/or (ii) of the Rules of Court 2012 ('ROC') to join the three doctors as co-respondents.

**Held (dismissing OS and encl. 8):**

**(1)** If there is an invalidity claim, according to s. 84(3) of the Act, the respondent's Board 'shall' decide whether the invalidity claim is in accordance with the decision of the MB or the AMB. Section 84(3) of the Act is a mandatory provision because Parliament has deliberately chosen to use a mandatory term 'shall' in that provision. The MB 'shall decide' any question of invalidity as mandated by ss. 32(a), 33(1) and 84(3) of the Act. Sections 32(a), 33(1) and 84(3) of the Act are imperative provisions as the mandatory term 'shall' is employed in these provisions. Furthermore, based on s. 84(5) of the Act, the court could not question a decision of the AMB on its merits. This is understandable as the court has no medical expertise to decide on an invalidity question while the AMB consists of three highly qualified and much experienced doctors. (paras 10-11 & 13)

**(2)** Any party who is dissatisfied with a decision of the AMB can only appeal to the High Court, under s. 91(1) and (2) of the Act, against such a decision provided that the appeal involves a 'substantial question of law' as follows (i) an important question of law is involved; (ii) a difficult question of law arises in the appeal; (iii) if the question of law involved is neither important nor difficult, the question is nevertheless a substantial question of law if the question is arguable in the sense that: (a) there is room for reasonable doubt on the question; or (b) there is a difference of opinion on the question; (iv) when a particular set of facts can lead to alternative findings of law, a substantial question of law is involved; (v) where a legal principle or rule to be applied in a case is not well-established, there arises a substantial question of law; or (vi) if the appeal concerns: (a) conflicting decisions of the High Court; or (ii) conflicting judgments of the Court of Appeal, on a question of law and there is no judgment of the Federal Court on question, there is a substantial question of law involved in the appeal. The above examples are not exhaustive. There are conflicting High Court decisions on the meaning of the phrase 'substantial questions of law' in s. 91(2) of the Act. The court followed the Indian case of *Rimmalapudi Subba Rao v. Noony Veeraju*, which construed the phrase 'substantial questions of law' in art. 133(1) of the Indian Constitution. Premised on the said case, an appeal does not involve a substantial question of law if the question of

law (i) only affects the rights of the parties; (ii) has been decided by the highest court; or (iii) the question of law could be decided by reference to well-settled general principles of law. (para 13)

**(3)** The appellant bore the burden to satisfy the court that the appeal concerned, in accordance with s. 91(2) of the Act. However, the present OS did not involve a 'substantial question of law', as required by s. 91(2) of the Act, as (i) the OS and the supporting affidavits did not raise any question of law, let alone a 'substantial question of law'; and (ii) the appellant had not discharged the onus to satisfy the court that the OS involved a 'substantial question of law'. (para 14)

**(4)** Order 15 r. 6(2)(b) of the ROC provides for the court's power to join any person to be a party in a pending suit. However, if the appellant could not appeal against the AMB's decision, *a fortiori*, the appellant could not join the three doctors in this OS. Enclosure 8 is dismissed with costs due to the following reasons: (i) the respondent is a statutory body constituted by s. 59A of the Act. Under s. 59A of the Act, only the respondent is liable to pay invalidity pension to the appellant and not (a) the MB and its members; and (b) the AMB and its members; and (ii) the three doctors were not personally liable for the claim and could not be joined as co-respondents in this OS, pursuant to both limbs of O. 15 r. 6(2) as (a) their presence before the court was not necessary to ensure that all matters in dispute, in this OS, may be effectually and completely determined and adjudicated upon within the meaning of O. 15 r. 6(2)(b)(i) of the ROC; and (b) between the appellant and the three doctors, there was no question or issue arising out of, relating to, or connected with this OS which would be just and convenient to determine. (para 8)

***Obiter:***

**(1)** Before the appellant attains the age of 60, if there is subsequent medical evidence to support an invalidity claim, the appellant may rely on reg. 48A(3) of the Regulations to make a subsequent reference for an invalidity pension. (para 17)

**Case(s) referred to:**

*Ketua Pengarah Pertubuhan Keselamatan Sosial v. Jusoh Abu Bakar [2003] 1 CLJ 383 HC* ***(refd)***

*Ketua Pengarah Pertubuhan Keselamatan Sosial v. Tham Tian Siong [2008] 8 CLJ 341 HC* ***(refd)***

*Ketua Pengarah Pertubuhan Keselamatan Sosial v. Vadivelan Sandara Saigara [2008] 9 CLJ 428 HC* ***(refd)***

*Mary Pushpam Savarimuthu v. Ketua Pengarah Pertubuhan Keselamatan Sosial [2006] 7 CLJ 511 HC* ***(refd)***

*Rimmalapudi Subba Rao v. Noony Veeraju AIR 1951 Mad 969* ***(refd)***

A *Sithamah Yarayah lwn. Ketua Pengarah Pertubuhan Keselamatan Sosial [2012] 1 LNS 1106 HC* ***(refd)***
*Wong Yew Loy v. Ketua Pengarah Pertubuhan Keselamatan Sosial [2010] 5 CLJ 467 HC* ***(refd)***

**Legislation referred to:**

B Employees' Social Security Act 1969, ss. 2(1A), (11), (16), 15(a), 32(a), 33(1), (2), 59A, 59B, 84(3), (5), 91(1), (2)
Employees' Social Security (General) Regulations 1971, regs. 47, 48A(3), 79(1), 79B(1)(a), (b), 81
Employees' Social Security (Social Security Appellate Board Procedure) Regulations, reg. 17(1)

C Rules of Court 2012, O. 15 r. 6(2)(b)(i), (ii)

The Constitution of India [Ind], art. 133(1)

*For the appellant - Daniel Bong Cheng Hua; M/s Karunamoorthy & Assocs*
*For the respondent - Diba Natalia Ishak; M/s Skrine*

D *Reported by Najib Tamby*

**JUDGMENT**
(encls. 1 and 8)

E **Wong Kian Kheong J:**

**Background**

**[1]** The appellant (appellant) suffered a fall at the Kajang train station. After the fall, the appellant claims that he has a disability. Hence, the appellant applied to the Social Security Organization (respondent) for an F "invalidity pension" (appellant's invalidity claim) under s. 15(a) of the Employees' Social Security Act 1969 (ESSA).

**[2]** The respondent's medical board (constituted under reg. 79 of the Employees' Social Security (General) Regulations 1971 (ESSR)) examined the appellant but dismissed the appellant's invalidity claim (medical board's G decision).

**[3]** The appellant appealed against the medical board's decision to the respondent's appellate medical board (constituted under reg. 79B ESSR) but this appeal was dismissed by the appellate medical board (appellate medical board's decision).

H

**This Originating Summons (OS)**

**[4]** In this OS, the appellant applies for the following orders against the respondent, among others:

I (i) an order to set aside the appellate medical board's decision; and

(ii) an order for the respondent to refer the appellant's invalidity claim to a newly constituted appellate medical board with three stipulated conditions.

**[5]** In court enclosure no. 8 (encl. 8), the appellant applies to the court for, among others, an order to join the three medical doctors who were members of the appellate medical board which made the appellate medical board's decision (three doctors) as co-respondents in this OS.

**Issues**

**[6]** The following questions arise in this OS:

(i) in respect of encl. 8, whether the court should exercise its discretion under O. 15 r. 6(2)(b)(i) and/or (ii) of the Rules of Court 2012 (RC) to join the three doctors as co-respondents in this OS. I am not able to find any previous Malaysian case which has decided on the joinder issue that has been raised in encl. 8; and

(ii) as regards the OS, whether the appellant can appeal against the appellate medical board's decision when:

(a) Sections 32(a), 33(1) ESSA and reg. 47 ESSR provide that any question regarding the appellant's invalidity, "shall" be decided by the medical board;

(b) any decision of the medical board may be appealable to the appellate medical board pursuant to s. 33(2) ESSA; and

(c) section 91(1) and (2) ESSA prescribe that an appeal to the High Court against a decision of the appellate medical board "shall" lie only if the appeal involves a "substantial question of law". There are conflicting High Court decisions on the meaning of the phrase "substantial question of law" in s. 91(2) ESSA. In this regard, I have decided to follow an Indian case on art. 133(1) of the Indian Constitution which employs the same phrase "substantial question of law".

**Enclosure 8**

**[7]** Order 15 r. 6(2)(b) RC provides for the court's power to join any person to be a party in a pending suit. I reproduce below O. 15 r. 6(2)(b) RC:

> O 15 r 6(2) Subject to this rule, at any stage of the proceedings in any cause or matter, the Court may on such terms as it thinks just and either of its own motion or on application:
>
> …
>
> (b) order any of the following persons to be added as a party, namely:
>
> (i) *any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon; or*

A (ii) *any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which, in the opinion of the Court, would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.*

B (emphasis added).

**[8]** I dismiss encl. 8 with costs due to the following reasons:

(i) the respondent is a statutory body constituted by s. 59A ESSA. Section 59A ESSA provides as follows:

C **The Social Security Organization.**

**The Organization shall be a body corporate** with perpetual succession and a common seal and **may** sue and **be sued in its name** and, subject to and for the purposes of this Act, may enter into contracts and may acquire, purchase, take, hold and enjoy movable and immovable property of every description, and may convey, assign, surrender, yield up, charge, mortgage, demise, reassign, transfer or otherwise dispose of, or deal with, any movable or immovable property or any interest in it vested in the Organization upon such terms as it thinks fit.

D

(emphasis added).

E It is clear from s. 59A ESSA that only the respondent is liable to pay invalidity pension to the appellant and not:

(a) the medical board and its members (the constitution of the medical board is provided in reg. 79(1) ESSR); and

F (b) the appellate medical board and its members (reg. 79B(1) ESSR provides for the constitution of the appellate medical board for Peninsular Malaysia);

(ii) as explained in the above sub-para. (i), the three doctors are not G personally liable for the appellant's invalidity claim. Accordingly, the three doctors cannot be joined as co-respondents in this OS pursuant to both limbs of O. 15 r. 6(2)(b) as follows:

(a) the three doctors should not be joined because their presence before this court is not necessary to ensure that all matters in dispute in this H OS may be effectually and completely determined and adjudicated upon within the meaning of O. 15 r. 6(2)(b)(i) RC; and

(b) as between the appellant and the three doctors, there is no question or issue arising out of or relating to or connected with this OS which would be just and convenient to determine - please see O. 15 I r. 6(2)(b)(ii) RC; and

(iii) for reasons explained in paras [9] to [15] below, the appellant cannot appeal against the appellate medical board's decision. If the appellant cannot appeal to this court against the appellate medical board's decision, a *fortiori*, the appellant cannot join the three doctors in this OS.

## Can Appellant Appeal Against Appellate Medical Board's Decision?

**[9]** Sections 32(a), 33(1), (2), 84(3), (5), 91(1) and (2) ESSA state as follows:

> **Determination of question of invalidity or disablement**.
>
> 32. **Any question**:
>
> (a) **whether the relevant accident or disease has resulted in the invalidity**;
>
> …
>
> **shall be determined by a medical board constituted in accordance with the regulations, if any, and such question shall hereinafter be referred to as the "invalidity question**" or "disablement question", as the case may be.
>
> **References to medical boards and appeals to appellate medical board**.
>
> 33(1) **The case of any insured person for invalidity pension** or for permanent disablement benefit **shall be referred by the Organization to a medical board for determination of the invalidity question** or the disablement question, and if, on that or any subsequent reference, the extent of loss of earning capacity of the insured person is provisionally assessed, it shall again be so referred to the medical board not later than the end of the period taken into account by the provisional assessment.
>
> 33(2) *If the insured person or the Organization is not satisfied with the decision of the medical board, the insured person or the Organization may appeal, in the prescribed manner and within the prescribed time, to the appellate medical board constituted in accordance with the regulations.*
>
> 84(3) **If in any proceedings before the Board an invalidity** or disablement *question arises and the decision of a medical board or appellate medical board has not been obtained on the same and the decision of such question is necessary for the determination of the claim or question before the Board, the Board shall direct the Organization to have the question decided by this Act and shall thereafter proceed with the determination of the claim or question before it in accordance with the decision of the medical board or the appellate medical board.*
>
> …
>
> 84(5) **No Civil Court shall have jurisdiction to decide or deal with any question or dispute which, by or under this Act, is to be decided by a medical board or by an appellate medical board**.
>
> **Appeal.**

91(1) **Save as expressly provided in this section, no appeal shall lie from an order of the appellate boards set up by or under this Act.**

91(2) **An appeal shall lie to the High Court from an order of an appellate board set up by or under this Act if it involves a substantial question of law**.

(emphasis added).

**[10]** Firstly, if there is an invalidity claim, according to s. 84(3) ESSA, the respondent's "board" (established under s. 59B ESSA) "shall" decide the invalidity claim in accordance with the decision of the medical board or the appellate medical board. I am of the view that s. 84(3) ESSA is a mandatory provision because Parliament has deliberately chosen to use a mandatory term "shall" in that provision.

**[11]** The medical board "shall" decide any question of invalidity (invalidity question) as mandated by ss. 32(a), 33(1) and 84(3) ESSA. It is to be borne in mind that ss. 32(a), 33(1) and 84(3) ESSA are imperative provisions because the mandatory term "shall" is employed in these provisions.

**[12]** Any person who is dissatisfied with a decision of the medical board may appeal to the appellate medical board under s. 33(2) ESSA and reg. 81 ESSR.

**[13]** Based on ss. 84(5), 91(1) and (2) ESSA, I am of the following view:

(i) according to s. 84(5) ESSA, the court cannot question a decision of the appellate medical board on its merits. This is understandable because the court has no medical expertise to decide an invalidity question whereas the appellate medical board consists of the following three highly qualified and much experienced doctors:

(a) the Director General of Health or his or her representative as the Chairman of the appellate medical board (reg. 79B(1)(a) ESSR); and

(b) two consultant specialists in the relevant medical field (reg. 79B(1)(b) ESSR).

The above view is supported by the following three High Court decisions:

(a) in *Ketua Pengarah Pertubuhan Keselamatan Sosial v. Rahim Darus* [2001] 2 CLJ 587; [2001] 5 MLJ 689, at p. 592 (CLJ); p. 696 (MLJ), Mohd Noor Abdullah J (as he then was) decided as follows:

*It is noted that the medical board comprised a chairman and one member and the appellate medical board comprised a chairman and two assessors, involving six medical specialists to decide on the medical*

*condition of the respondent. These constitute sufficient safeguard. In my view the invalidity question is a medical question, better if not best answered by the medical profession and jurisprudence.*

(emphasis added);

(b) Raus Sharif J (as he then was) held as follows in *Mary Pushpam Savarimuthu v. Ketua Pengarah Pertubuhan Keselamatan Sosial* [2006] 7 CLJ 511, at [10] and [11]:

> [10] Firstly, *I am of the view that there is no necessity for the Social Security Appellate Board to refer the above said question to this court. This is because the High Court in Rahim bin Darus had clearly held that under the Act the question of invalidity is to be decided by the Medical Board and the Appellate Medical Board and the Social Security Appellate Board lacks the jurisdiction to determine the invalidity question. …*
>
> [11] Secondly, **notwithstanding the above observation, I am of the view that *Rahim Darus* case was rightly decided.** …"
>
> (emphasis added); and

(c) *Rahim bin Darus* and *Mary Pushpam Savarimuthu* have been followed by Has Zanah Mehat J (as she then was) in *Sithamah Yarayah lwn. Ketua Pengarah Pertubuhan Keselamatan Sosial* [2012] 1 LNS 1106; [2012] MLJU 990, at [10];

(ii) any party who is dissatisfied with a decision of the appellate medical board (either an "insured person" (defined in s. 2(11) ESSA) or the respondent) can only appeal to the High Court under s. 91(1) and (2) ESSA against such a decision provided that the appeal involves a "substantial question of law";

(iii) regarding the meaning of the phrase "substantial question of law", I refer to the following High Court decisions (in chronological order):

(a) *Ketua Pengarah Pertubuhan Keselamatan Sosial v. Jusoh Abu Bakar* [2003] 1 CLJ 383; [2002] 7 MLJ 17 concerns reg. 17(1) of the Employees' Social Security (Social Security Appellate Board Procedure) Regulations 1976 (reg. 17(1)) which reads as follows:

> **There shall be no appeal to the High Court from an order of the Board unless the order involves a substantial question of law**.
>
> (emphasis added).

Section 2(1A) ESSA defines the "board" as the Social Security Organization Board established under s. 59B ESSA.

Nik Hashim J (as he then was) decided as follows in *Jusoh*, at p. 385 (CLJ); p. 20 (MLJ):

> **The appeal**
>
> *Aggrieved by the Board's decision, the appellant, acting under s. 91(2) [ESSA], appealed to this court contending that the decision of the Board involved a substantial question of law in that the decision of the Board was contrary to the provisions of s. 24(1) and (2) [ESSA], and according to learned counsel, there seems to be no reported case as yet on the application of the section in the country.*
>
> **The findings of the court**
>
> *With respect, I agree with the appellant that its contention involves a substantial question of law as it involves the interpretation of certain provisions of the Act and their application to the facts of this case.*
>
> (emphasis added);

(b) Hamid Sultan JC (as he then was) held in *Ketua Pengarah Pertubuhan Keselamatan Sosial v. Tham Tian Siong* [2008] 8 CLJ 341; [2008] 7 MLJ 854, at [9] as follows:

> [9] It is incumbent upon an employee to travel from his home to the workplace and from the workplace to his home. It is my judgment that such commuting will fall within the phrase 'connected'. During such commuting some deviation to have a cup of tea or to buy some grocery or to stop at a friend's house does not necessarily mean that it is not directly connected to the employment. It all depends on the facts. And where there is a dispute it is for the Board to make a finding. *I do not think that such facts which has to be determined by the Board can ordinarily be a subject matter of an appeal, by the appellant though any decision of the Board can be questioned by the respondent provided it can satisfy the criteria set out in [Reg. 17(1)]. As a general rule it will be sufficient for the appellant when challenging the decision of a tribunal to satisfy the court that the tribunal has dealt with the wrong questions or has taken into account irrelevant considerations or has misconstrued the terms of any relevant statute, or has misapplied or misstated a principle of the general law (see Syarikat Kenderaan Melayu Kelantan Bhd v. Transport Workers' Union [1995] 2 MLJ 317). However, [Reg. 17(1)] places a higher burden on the appellant in that he must satisfy the court at the commencement of the proceedings that it involves substantial question of law to justify the hearing of the appeal.*
>
> (emphasis added);

(c) in *Ketua Pengarah Pertubuhan Keselamatan Sosial v. Vadivelan Sandara Saigara* [2008] 9 CLJ 428; [2009] 1 MLJ 238, at [10], [28] and [37], VT Singham J decided as follows:

> *[10] This court finds that this appeal is revolved on the interpretation to be given to s. 24(1) [ESSA] and it must involve a substantive question of law. In other words, if the appeal is purely on the question of fact, this appeal cannot be brought to the High Court. However, the distinction between question of fact and question of law has been productive of several cases and judicial statements. Nevertheless, in order to decide this substantive question of law which revolves around s. 24 [ESSA], it cannot be disputed that this court may still have to revert to the background facts in order to consider whether those facts and circumstances come within the ambit of s. 24 [ESSA]. Accordingly, in order to secure a finding on the substantive question of law as provided under s. 91(2) [ESSA] and [Reg 17(1)], this court has to consider the facts and cannot decide this appeal in isolation or in the abstract alone on the question of law. In other words, this is a case of mixed law and by necessity facts although the expression of the question of mixed law and facts could arguably be described as a hybrid question and not just substantial question of law as stipulated in s. 91(2) [ESSA] and [Reg 17(1)] (see Felix v. General Dental Council [1960] AC 704 at p. 714).*
>
> …
>
> *[28] As for the submission of learned counsel for the SOCSO that the contradiction between the insured's statement to the SOCSO and his police report when compared to his testimony before the board, this court is of the considered view that it must be regarded as one of fact and is not a substantial question of law as s. 91(2) [ESSA] and [Reg 17(1)] expressly state that there must be a 'substantial question of law' for the appeal to be brought to the High Court. …*
>
> …
>
> *[37] In the circumstances, this court finds that the learned chairman had not erred in law in interpreting s. 24(1)(c) [ESSA] in favour of the insured as that was the understanding between the employer and the insured that he was granted permission to leave early to have his food and to return to work. SOCSO has not been able to demonstrate that there is any error in law in the interpretation of s. 24(1) [ESSA]. The question of the insured having omitted to give detailed account to the SOCSO's officer is a question of fact and not law as it merely relates to the weight to be given to the evidence of the insured for this omission due to inadvertence. This court therefore ought not to interfere with the findings of fact, for reason that SOCSO as the appellant is permitted to appeal to this court only if it involves a substantial question of law as provided under s. 91(2) [ESSA] and [Reg 17(1)].*
>
> (emphasis added); and

(d) according to Lau Bee Lan J (as she then was) in *Wong Yew Loy v. Ketua Pengarah Pertubuhan Keselamatan Sosial* [2010] 5 CLJ 467; [2009] MLJU 1264, at [4] and [5]:

> [4] The Appellant raised 3 issues of law in his Memorandum of Appeal as correctly identified by learned Counsel for the Respondent … …
>
> [5] With due respect to the learned Counsel for the Respondent who submitted there is no question of law to be determined, I am of the view that the said issues involved a substantial question of law to warrant this appeal to the High Court under s. 91 [ESSA]; although inevitably the Court would have to consider the facts.
>
> (emphasis added);

(iv) my research has disclosed that the phrase "substantial question of law" is used in art. 133(1) of the Indian Constitution which reads as follows:

> **An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies under article 134A**:
>
> (a) **that the case involves a substantial question of law of general importance**; and
>
> (b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.
>
> (emphasis added).

In a decision of the Full Bench of the Madras High Court in *Rimmalapudi Subba Rao v. Noony Veeraju* AIR 1951 Mad 969, at [3], [8], [9] and [11] Rajamannar CJ construed the phrase "substantial question of law" in art. 133(1) of the Indian Constitution as follows:

> [3] **The question referred for decision by a Full Bench runs as follows**:
>
> *Whether the words 'substantial question of law' occurring in art. 133 Constitution of India mean an important or difficult question of law or any question of law affecting the rights of parties*?
>
> ...
>
> [8] … *In my opinion the decision in Mahadeva Royal v. Chikka Royal, 1942 1 MLJ 309 should not be taken as an authority for the position that any question of law, a decision on which may affect materially the rights of the parties, is a substantial question of law within the meaning of Section 110 of the Cod*e.

[9] It is neither possible nor useful to attempt to exactly define terms like "substantial" and "just and equitable". Ultimately it resolves into itself into their meaning that the Court considers to be substantial, reasonable or just and equitable. *The use of the adjective "substantial" makes it clear that any question of law as such would not justify the grant of a certificate under Section 110. It must be a substantial question; that is to say, the question must have some substance, i.e. worth or merit. Bearing this in mind in consideration of the authorities which I have cited leads to the following general principles. When a question of law is fairly arguable, when there is room for difference of opinion on it, then such a question would be a substantial question of law. If this Court thought it necessary to deal with a question of law at some length, and discuss alternative views which can be taken on the point, then, I think such a question would be a substantial question. When a point of law is practically covered by a decision of the highest authority Court, say, like the Privy Council or the Supreme Court, then it would not be a substantial question. If the general principles to be applied in determining a question are well settled a mere application of such principles would not involve a substantial question of law. I am inclined to hold that when a particular set of facts can lead to alternative findings in law, then, a substantial question of law would be involved. If the principle to be applied or the point of law arising in the case is not well established, then certainly that would be a substantial question of law.* With great respect to the learned Judges who appear to hold to the contrary, *I am of opinion that if there is conflict of judicial opinion among the High Courts and there is no direct decision of the highest Court on any question of law, then that would be a substantial question of law, though the decisions of the particular High Courts of which leave is sought might have been uniform on the question*. That fact may be a very good ground for dismissing a second appeal if the lower Courts had followed the rulings of the High Court, but for an application for leave to appeal to the Supreme Court, *I think the very fact of divergence of opinion among the High Courts is conclusive evidence of the existence of a substantial question of law*.

…

[11] *The only answer to the question that we can usefully give is that any question of law affecting the rights of parties would not by itself be a substantial question of law. An important or difficult question would of course be a substantial question; but even if a question is not important or difficult, if there is room for reasonable doubt or difference of opinion on the question, then it would be a substantial question of law within the meaning of Art. 133, Constitution of India*.

(emphasis added);

(v) I accept the interpretation of the phrase "substantial question of law" given in *Rimmalapudi Subba Rao*. There can only be an appeal against a decision of the appellate medical board to the High Court under s. 91(1) and (2) ESSA if an appellant, be it a claimant or the "Organization" (defined in s. 2(16) ESSA as the Social Security Organization), can satisfy the High Court that the appeal involves a "substantial question of law" as follows:

(a) an important question of law is involved;

(b) a difficult question of law arises in the appeal;

(c) if the question of law involved is neither important nor difficult, the question is nevertheless a substantial question of law if the question is arguable in the sense that:

(1) there is room for reasonable doubt on the question; or

(2) there is a difference of opinion on the question;

(d) when a particular set of facts can lead to alternative findings of law, a substantial question of law is involved;

(e) where a legal principle or rule to be applied in a case is not well established, there arises a substantial question of law; or

(f) if the appeal concerns:

(1) conflicting decisions of the High Court; or

(2) conflicting judgments of the Court of Appeal

on a question of law and there is no judgment of the Federal Court on the question, there is a substantial question of law involved in the appeal.

I should add that the above examples of a "substantial question of law" are not exhaustive;

(vi) premised on *Rimmalapudi Subba Rao*, an appeal does not involve a "substantial question of law" if:

(a) the question of law only affects the rights of the parties;

(b) the question of law has been decided by our highest court; or

(c) the question of law can be decided by reference to well-settled general principles of law; and

(vii) the appellant bears the burden to satisfy the court that the appeal concerns a "substantial question of law" in accordance with s. 91(2) ESSA.

**[14]** I dismiss this OS with costs on the following grounds:

(i) the court cannot question the appellate medical board's decision – please see the reasons and cases cited in the above sub-para. 13(i); and

(ii) this OS does not involve a "substantial question of law" as required by s. 91(2) ESSA because:

(a) this OS and the supporting affidavits did not raise any question of law, let alone a "substantial question of law" as explained in the above sub-paras. 13(ii), (iv) and (v); and

(b) the appellant has not discharged the onus to satisfy this court that this OS involves a "substantial question of law".

**[15]** All the cases cited by the appellant's learned counsel do not concern ss. 32(a), 33(1), (2), 84(3), (5), 91(1) and (2) ESSA.

**Appellant May File Subsequent Reference To Respondent**

**[16]** Regulation 48A ESSR provides as follows:

> **Subsequent reference of invalidity pension to the Medical Board.**
>
> 48A(1) *The Organization shall refer the invalidity question for the decision of the Medical Board if a subsequent reference is made by the insured person, which reference shall be referred in the same locality as the first reference together with the latest medical report pertaining to the insured person's current health conditions.*
>
> (2) *The insured person shall exhaust all available procedures pertaining to the referral of invalidity question to the Medical Board or the Appellate Medical Board before filing a subsequent notice of invalidity under this regulation.*
>
> (3) *Notwithstanding subregulation (1) and (2), if the morbid condition that sets in is aggravated or worsening or different from the earlier reference, the insured person may file a subsequent notice of invalidity to the Organisation at any time before he attains sixty years of age.*
>
> (emphasis added).

**[17]** Before the appellant attains 60 years old, if there is subsequent medical evidence to support an invalidity claim, the appellant may rely on reg. 48A(3) ESSR to make a subsequent reference for an invalidity pension.

**Court's Decision**

**[18]** Based on the reasons explained in the above paras. [7] & [8], this OS is dismissed with costs.